



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2004

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2004-8181

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210062.

The Waco Police Department (the "department") received a request for information relating to a specified case number. You indicate that the department has released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the information that the department seeks to withhold under section 552.108 relates to an open and pending case. Based on your representation, we find that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore conclude that the information that the department seeks to withhold under section 552.108 is excepted from disclosure under section 552.108(a)(1).

Section 552.130 excepts from disclosure information that relates to “a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(2). We agree that the highlighted Texas license plate and vehicle identification numbers must be withheld from the public under section 552.130. We have marked related information that this section also protects from public release. We note, however, that section 552.130 protects privacy interests. In this instance, the requestor appears to be the owner of the vehicle to which the section 552.130 information pertains. If so, then the requestor has a special right of access to his own motor vehicle information, and that information may not be withheld from him under section 552.130.¹ See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is not the owner of the vehicle to which the information in question pertains, then the department must withhold the license plate number, the vehicle identification number, and the marked information under section 552.130.

In summary: (1) the information that the department seeks to withhold under section 552.108 is excepted from disclosure under section 552.108(a)(1); and (2) unless the requestor has a right of access to the information, the department must withhold the Texas license plate and vehicle identification numbers and the marked information under section 552.130. The rest of the submitted information must be released. As we are able to make these determinations, we need not address section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

¹We note that section 552.222 of the Government Code authorizes the department to require the requestor to provide additional identifying information sufficient to enable the department to determine whether the requestor is eligible to receive motor vehicle record information under chapter 730 of the Transportation Code. See Gov’t Code § 552.222(c).

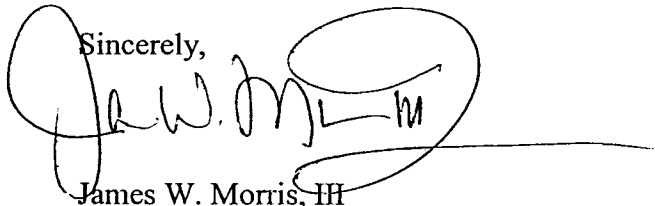
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, loopy flourish extending from the end of the signature.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 210062

Enc: Submitted documents

c: Mr. Joel J. Thompson, III
1836 Hilltop Drive
Waco, Texas 76710
(w/o enclosures)